

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH W. DODGSON,	:	
Petitioner	:	
	:	
vs.	:	CIVIL NO. 1:CV-08-1420
JOSEPH NISH, Superintendent	:	
S.C.I. WAYMART,	:	
Respondent	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the Report and Recommendation by the Magistrate Judge recommending we deny Petitioner's writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner objects to the finding that his petition is barred by the statute of limitations. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

The petition is governed by 28 U.S.C. § 2244, which provides in pertinent part:

A 1-year period of limitation shall apply to any application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation shall run from the latest of - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review...

28 U.S.C. § 2244(d)(1). The statute is tolled during the time in which "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." *Id.* § 2244(d)(2). The statute may be equitably tolled when principles of equity would make the rigid application of the of the limitations period unfair. *Miller v. New Jersey State Dept. of Corrections*, 145 F.3d 616, 618 (3d Cir. 1998).

After review of the record, we agree with the Magistrate Judge's determination that the statute of limitation bars Petitioner's claim. We see no reason for further comment since our reasoning follows that of the Magistrate Judge's Report.

AND NOW, this 31st day of December, 2008, it is ordered that the Magistrate's Report (doc. 10) filed November 6, 2008, is adopted. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 1) is denied. The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge